

RE MARKS / ARGUMENTS

At the outset of the Office Action the Examiner has proffered claim objections resulting from typographical error encountered in the new requirements for retyping the entire claim program. Presumably, those problems will be avoided when the Office finally achieves a paperless system.

It is noted that claims 1-9, 11-23, 25-30, 32-36 and 42-50 have been rejected under § 112 of the Patent Statute. The Examiner has noted that with respect to claims 1, 13, 27, 42 and 48-50 it is not understood what applicants attempt to define with phrases "fixed to oppositely disposed portions of said rod beam" and "fixed to oppositely disposed portions of said load transfer rod". The Examiner then queries as to whether the wall-forming rods are in a different plane than the plane that contains either the rod beam or the load transfer rods. This indicates a misunderstanding of the structure. At line 15 of claim 1, for example, the terms "fixed to oppositely disposed portions of said rod beam" are followed with the terms "forward extensions to define a forward receptor gap". Looking to Fig. 2 and page 8, lines 13 et seq. of the detailed description, note that the rod beams 98 are bent upwardly in the sense of Fig. 2 to provide forward extensions, certain of which are identified at 98'. Now looking to line 18 of claim 1, the wall forming rods are described as fixed to oppositely disposed portions of said rod beam rearward extensions. Returning to page 8 of the detailed description and line 15, the description provides that in similar fashion, the rod beams 98 are bent upwardly to provide rearward extensions, certain of which are represented at 98''. The detailed description further describes that the extensions 98' and 98'' have a length for establishing the height of the respective forward wall 86 and rearward wall 88.

Now turn to page 10 of the detailed description at lines 14 et seq. which describe that a corresponding grouping of three-forward wall-forming rods are positioned on the opposite sides of the rod beam forward extensions 98'. The top one of these rods as seen in Fig. 2 at 158 and the loop ends thereof fall in alignment with those at 154 and 156. With this arrangement the forward receptor gap as seen in Fig. 2 at 160 is provided. Now return to claim 1 and note that the wall-forming rods are fixed to oppositely disposed portions of said rod beam forward extensions (i.e., 98') to define a forward receptor gap (i.e., receptor gap 160).

Now look to line 18 of claim 1 where rearward wall-forming rods are described as being fixed to oppositely disposed portions of said rod beam rearward extensions. The Examiner should consider the rest of the statement which provides that such fixation is to define a rearward receptor gap. Note at page 10, lines 25 et seq., that the rearward wall 88 is described as configured with a plurality of rearward wall-forming rods fixed to the extensions 98'' at either

side thereof. With such structuring, a rearward receptor gap is fashioned for receiving inserts and the like.

At line 20 of claim 1 a plurality of first side load transfer rods and their connection to rod beams 98 is described. In Fig. 2 and at page 8, line 26 of the detailed description the load transfer rods 100 are bent upwardly in the sense of Fig. 2 to form sidewall extensions certain of which are represented at 102 in Fig. 2. Now look to the recitation commencing at line 23 of claim 1 which provides that there are first sidewall forming rods fixed to oppositely disposed portions of the load transfer rod first sidewall extensions. This opposite mounting then is described as defining a first side receptor gap which is shown at 120 in Fig. 2. A mirror image arrangement is provided on the opposite side of the shelf to define the receptor gap 142. In this regard, commencing at line 26, the second side load transfer rods 130 are described with second sidewall extensions. Finally, commencing at line 29 of claim 1, second sidewall forming rods are described as being fixed to oppositely disposed portions of the load transfer rods at second sidewall extensions and this defines a second side receptor gap shown at 142 in Fig. 2. These sidewall rods also function as a structural buttress, the load imposed by goods placed upon the shelf being transferred by load transfer rods into the sidewall rods and thence into the bracket components. In effect, the structure is a "stand alone" one in which no extraneous structural buttressing is required.

Claim 13 has essentially the same form of description of this open wire but still structurally rigid and secure shelf structuring.

Claim 27 doesn't have the recitations described by the Examiner. In this regard there are no receptor gaps recited. However, the claim looks to the shelf structure of Fig. 16-20. Note in claim 27 that the rod beams have forward extensions extending a forward wall height at the forward region to define sign contact surfaces. That sign contact surface is described in the detailed description, for example, at page 21, lines 8-13.

Claim 42 does not have the language representing the instant rejection.

Claim 48 is an independent version of claim 10 and was earlier indicated as being allowable. The claim incorporates the same receptor gap defining wall structuring as described above in connection with claim 1. The same holds true for remaining earlier-indicated as allowable claims 49 and 50.

With respect to claim 5 the Examiner suggests that it is misdescriptive because it's unclear as to which of the rods are considered to be the four rods that form parallelogram loops. The claim is simply written broader than that called for by the Examiner. As seen in the side view figures, the distribution of these loops is esthetically pleasing as illustrated and represents

a preferred embodiment. However, from a claiming standpoint there is no requirement that the applicant specify specific locations.

Concerning claims 9, 23, 48 and 49, the Examiner indicates a positive inclusion of "vertical supports". Claim 9 can be improved by eliminating the double use of the term shelf assembly in the preamble. The term "vertical support" is not positively recited but refers back to those terms as are recited indirectly in the opening paragraph of claim 1. The claim looks to the embodiment commencing with Fig. 16. The same form of commentary applies to claims 23, 48 and 49.

Concerning the discrepancy of claims 11, 25 and 32, these claims are properly dependent upon and were earlier amended for dependency upon respective claims 48, 49 and 50.

The Examiner has indicated that in claim 45 there is no antecedent basis for "said two forward wall-forming rods". Claim 45 is dependent upon claim 42 which in its third paragraph recites two mutually parallel forward wall forming rods. That is the antecedent basis for the subject terminology.

It is noted that claims 1 and 6 have been rejected under §103 of the Patent Statute, the Examiner citing Buffington, et al., U. S. Patent No. 4,583,648 (Buffington, et al.) in view of Merl, U. S. Patent No. 5,133,463 (Merl) and Trulaske, Sr., U. S. Patent No. 4,890,746 (Trulaske, Sr.).

In applying Buffington, et al. the Examiner identifies base rods 32 and what he considers to be rod beams 30 and he describes the rod beams as having forward extensions as described in claim 1 extending a forward wall height and rearward extensions extending a rearward wall height. He then describes that the U-shaped body 42 represents side wall forming rods. In actuality, they are part of the brackets supporting the shelf to which the rod beams 30 are clamped. The Examiner then erroneously describes that a receptor gap is defined between side wall-forming rods 46 and 48. In actuality, those rods may be considered to be in the same plane by virtue of their attachment to the support plate 44. There is no gap which is possible with the geometry disclosed. It may be recalled that the receptor gap in the sidewalls are shown in Fig. 2 at 120 and 142. That receptor cap is carefully defined in claim 1 as described in detail above. There is no such receptor gap in the reference nor is there any suggestion that such a receptor gap could be provided nor is there any suggestion that the function of the receptor gap may be employed. The Examiner is correct in that Buffington, et al. does not teach sidewalls having load transfer rods in connection with the rod beams. The load transfer rods have been described in Fig. 2, for example, at 100 and 130. The Examiner contends that Merl teaches sidewalls having load transfer rods. Load transfer is provided from rod beams in Merl, however, it is provided directly to a bracket and not sidewalls and, of course, there is no hint of a receptor gap anywhere in the reference. The Examiner has commented with respect to these two references

that it would have been obvious to modify the sidewalls of Buffington, et al. (which don't exist) to have load transfer rods nor to have removable sidewalls that are adjustable to accommodate various widths between two support post. The latter commentary has nothing to do with the present invention. The sidewalls are structural entities and they are fixed. They also have receptor gaps.

Next, the Examiner indicates that Trulaske, Sr. teaches a shelf having a forward wall extension (36, 44 and 48) and a rearward wall extension (38, 46 and 48). In fact these are not extensions but are implements which permit the assembly with the shelf of a guide assembly as shown in Fig. 7. It is interesting to note that the patent teaches directly away from receptor gaps and guide bars are provided as a guide assembly or fixture which is snapped on to the refrigeration shelf. The refrigeration shelf itself is not supported from sidewalls but rests upon front and rear brackets F and H as described in connection with Fig. 3. It is submitted that the combination of these references does not meet the requirements of claim 1 and the combination of the references is illogical.

In summary, the Examiner indicates that at the time the invention was made one of ordinary skill would have been motivated to modify the rearward walls of Buffington, et al. with the provision of elongated wall-forming rods as taught by Trulaske, Sr. "...in order to take play in restraining the objects on the shelf and preventing them from falling off.". The Examiner should revisit Trulaske, Sr. and observe the guide assembly A of Fig. 7 which is a separate fixed item designed for canned beverages within a refrigerator. The whole concept of the versatility achieved with receptor gaps is entirely missing and that concept, *inter alia*, is clearly claimed in claim 1. Claim 6, dependent upon claim 1 describes the sidewall forming rods as being spaced outwardly from the forward and rearward wall-forming rods to form access gaps adjacent the bracket assemblies. This permits access to the unique adjustment features of the brackets. The access gaps, for example, are shown at 176 and 178 in Fig. 2. There is no hint of such a feature in any of the references.

It is noted that claims 2-4 and 42-46 have been rejected under § 103 of the Patent Statute as being unpatentable over Buffington et al., in view of Merl and Trulaske, Sr. as applied to claims 1 and 6 and further in view of Garfinkle, U. S. Patent 4,881,707 (Garfinkle '707). Garfinkle '707 is described as teaching a display support comprising a generally planar sign engaging surface (11A, 11B) and at least two couplers 22 and 50. The Examiner ignores the recitation of these claims which accurately define the uniqueness of the sign mount. The first interesting observation which can be made with respect to the Garfinkle sign is that it is pointing the wrong direction for the instant purpose. The orientation of the sign will be of no help whatsoever in improving the geometry to a customer aisle located eye station under circumstances where a

shelf will have any of a variety of tilting aspects. Accordingly, there is no rationale for joining this patent with the earlier references. It won't solve the problem no matter how it's adjusted. Note in column 2, line 16 that the hinge 13 is provided to maintain the frame member in a substantially vertical orientation. The device includes an U-shaped attachment member 22 which can engage what is presumably a conventional C-shaped channel molding of a grocery shelf (circa 1989). Claim 2 requires a sign mount connected to forward wall-forming rods and at least two couplers which are connected between the sign engaging surface assembly and those wall-forming rods in orientations altering the slope of the sign engaging surface in compensating correspondence with the predetermined angles provided by the bracket assembly. Claims 3 and 4 add even further definition and each claim clearly distinguishes over Garfinkle '707.

Claim 42 additionally clearly distinguishes over the cited combination of references. Brackets are called for which support the shelf base region at predetermined angles and the sign mount is described as incorporating at least two couplers connected between the sign engaging surface assembly and the forward wall-forming rods in orientations altering the slope of the sign engaging surface in compensating correspondence with the noted bracket predetermined angles. There simply is no correspondence between the recitation of these claims and the references cited.

It is noted that claims 2-4 and 42-47 have been rejected under § 103 of the Patent Statute as being unpatentable over Buffington, et al., in view of Merl and Trulaske, Sr. as applied to claims 1 and 6 and further in view of Butcher, et al, U. S. Patent No. 5,375,357 (Butcher, et al). In applying this rejection, Butcher, et al. is said to teach two couplers. That's incorrect. Looking again to Fig. 2, the couplers are shown at 244 which are spaced apart along the bay width. By contrast, Butcher, et al. shows one coupler with two parts. Claim 2 further requires that the sign mount couplers be connected between the sign engaging surface assembly and the forward wall-forming rods. The claim further calls for orientations altering the slope of the sign engaging surface in compensating correspondence with the predetermined angles of the brackets. There is no suggestion whatsoever in Butcher, et al. as combined with the other references of such features.

Claim 3 establishes two forward wall-forming rods with a predetermined spaced distance and a coupler having a semicircular periphery engageable to provide the slope for the sign surface. There is no suggestion of such an arrangement in any of the references taken in any combination. See the declaration by K. R. Gay.

Claim 4 adds that the coupler periphery is configured having a sequence of notches with a notch shape for receiving a forward wall-forming rod. Butcher, et al. shows enmeshed gears which do not suggest the claimed configuration of notches and wall-forming rods. Claim 4

further calls for a flexible strap extending through the centrally disposed opening within the coupler. No such feature is present in any of the references.

Claims 42-47 essentially incorporate the same limitations and fully distinguish over the combination of references.

It is noted that claims 5, 7 and 8 have been rejected under § 103 of the Patent Statute as being unpatentable over Buffington et al., in view of Merl and Trulaske, Sr. as applied to claims 1 and 6 and further in view of R. G. Chesley, U. S. Patent No. 3,194,528 (Chesley). Chesley teaches a bracket-mounted wire shelf which has no receptor gaps whatsoever. Figs. 6 and 7 of the document show U-shaped locking elements or tabs 100 and 102 which extend over the horizontal bar at the rear and are configured either with tabs or hooks which engage an upwardly open front stop component. By contrast, claim 1 provides that all four sides of the shelf are formed to define receptor gaps and the technique of that formation also is present in the claim. Claim 5 describes that four of the forward wall-forming rods as well as four each of the two sidewall forming rods are configured as adjacent parallelogramic loops. There is no such structure suggested in Chesley and it may be noted that claim 5 further elaborates upon the precise structure of the receptor gaps. Claim 7 calls for D-shaped merchandise retaining loop spaced apart legs insertable within the forward receptor gap. There is no D-shaped merchandise retaining loop taught in Chesley and there are no oppositely disposed legs which are positionable within receptor gaps. With respect to claim 8, there are no D-shaped rod form guideways with downwardly disposed legs positionable into rearward and forward receptor gaps. Not only are such components not present but the receptor gaps are not present in the references. The Chesley reference is completely inapposite.

It is noted that claims 9 and 48 have been rejected under § 103 of the Patent Statute as being unpatentable over Buffington et al., in view of Merl and Trulaske, Sr. as applied to claims 1 and 6 and further in view of Loew, U. S. Patent No. 5,860,537 (Loew). Loew teaches a lockable sign which also is referred to as a valence assembly functioning to prohibit customer access to merchandise stored in a storage area. The access preventer can carry a display. By contrast, claims 9 and 48 look to signage, the function of which is to lure the customer to raise the sign and acquire merchandise stored behind it. The sign is so structured that it will display, for example, a wallpaper border pattern which otherwise would not be seen by the customer since such merchandise comes in rolled form. The Loew device locks the customer away from the merchandise.

Claim 9 recites the features which permit this desirable display technique. Note that it calls for at least three parallel elongate base rods including two forward base rods which are positioned in spaced adjacency with the shelf forward region. No such combination is

suggested by the references. Next, a sign support assembly is described as pivotally supported from a select one of the forward base rods. That feature simply is not suggested by the references taken in any combination. Next, the claim recites that the sign support assembly has a display width of dimension effective to contact forward region of a mutually next adjacent lower shelf assembly to effect a sloping orientation for promoting visualization from an eye station. The Fig. 1A referenced by the Examiner provides a sloping of the locking display in the opposite direction.

Claim 48 provides the same form of recitation in independent form. It is noted that claim 11, which is properly dependent upon claim 48 has been rejected under § 103 of the Patent Statute as being unpatentable over Buffington et al., in view of Merl and Trulaske, Sr. as applied to claims 1 and 6 and further in view of Howard, et al., U. S. Patent No. 4,531,311 (Howard, et al). Claim 11 initially was dependent upon claim 10 which was replaced by claim 48. The claim was earlier amended to recite that it is dependent upon claim 48. It should be pointed out that claim 10 at one point was determined to be allowable. Accordingly, in the amendment and response to the Office Action mailed January 16, 2003, new claim 11 was amended to dependency upon then allowed claim 48. In that same response, claim 25 was amended to dependency upon claim 49 and claim 32 was amended to dependency upon claim 50. Claims 10, 24 and 31 then were cancelled. The failure to carry over those amendments to the so called new format of claims represented a typographical error. However, the Examiner's record should reflect the earlier amendment activity.

Claim 11 describes the structure illustrated in connection with Figs. 19 and 20 and sets forth that the first channel assembly as formed as a dual channel assembly having a forward channel identified at 574 at the front face and a rearward channel identified at 575 at the rear face. Additionally, the first channel assembly includes a channel containing engagement member identified at 578 which is positioned in spaced relationship from the rearward channel. Next, the claim calls for a pivot connector which includes a connector channel identified at 584 which is slidably engageable with the rearward channel and includes a stabilizer tab identified at 586 engageable with the engagement member. Howard, et al. describes a pivoted data carrying member formed with spaced apart channels which pivots over a UPC code carrying sign. The data carrying member has a dual channel at the top and there the resemblance to claim 11 ends. There is no channel containing engagement member positioned in spaced relationship from the rearward channel and there is no pivot connector which includes a connector channel slidably engageable with the rearward channel including a stabilizer tab engageable with the engagement member.

The Examiner's commentary as to obviousness has nothing to do with the invention at hand. For example, the Examiner combines the references to purportedly provide a feature "...to have a display support that enables to display information at the front of the support for a consumer viewing and display information at the rear of the support for store personnel to reorder of merchandises.". As best understood, that statement has nothing to do with the invention.

It is noted that claim 12 has been rejected under § 103 of the Patent Statute as being unpatentable over Buffington et al., in view of Merl and Trulaske, Sr. as applied to claims 1 and 6 and further in view of Sainato, U. S. Patent No. 4,798,013 (Sainato). Claim 12 looks to the overhead signage described, for example, in connection with Figs. 16 and 17. Dependent upon claim 1, the claim looks to the use of the side receptor gap, a feature not found in any of the references. In this regard, the claim calls for first and second stanchions with insertion ends which are mountable in the corresponding receptor gap. Overhead bracket assemblies then provide for angular adjustment of the flat overhead visual display support which is described as having width corresponding with the bay width. Sainato shows an overhead sign which is mountable to a wall over a shelf or with brackets to the top of what appears to be a gondola. It is doubtful whether the width of the sign shown in Sainato corresponds with the bay width of the shelf. Claim 12 is clearly distinguishable over the references and it's unobviousness view of its close association with the unique receptor gap features of claim 1.

It is noted that claims 42-47 have been rejected under § 103 of the Patent Statute as being unpatentable over Buffington, et al., in view of Butcher, et al. In applying this rejection the Examiner points out that Buffington, et al. discloses a base region 32. In actuality, that number represents a base rod and the Examiner's commentary with respect to a bay width is inappropriate inasmuch as the subject matter is not present in the patent. The Examiner did not indicate which of the Butcher, et al. patents is involved in the rejection, however, the commentary submitted above is still appropriate particularly with respect to the Examiner's indication of two couplers 12 and 14. Items 12 and 14 are two parts of one coupler and the Butcher, et al. patents do not describe a sign mount which is connected to forward wall-forming rods with at least two couplers connected between the sign engaging surface assembly and the forward wall-forming rods in orientations altering the slope of the sign engaging surface in compensating correspondence with the predetermined angles established by brackets. There is no hint of that combination in the combined references.

Claim 43, dependent upon claim 42 describes that the two forward wall-forming rods are spaced apart a predetermined distance, a concept not taught in Buffington, et al. and that each

coupler is configured having a rearwardly disposed semicircular periphery engageable with the wall-forming rods. There is no suggestion of this combination in the references.

Claim 44, dependent upon claim 43 describes the coupler periphery as being configured having a sequence of notches each with a notch shape for receiving a wall-forming rod. There is no suggestion of this combination in the references. Next, the claim calls for a flexible strap retainer. There is no such item suggested in the references.

Claim 45, dependent upon claim 42 provides the above recitations in combination with the flange connector.

Claim 46 is amended to delete the term "rod". Claim 46 and 47 should be considered allowable for reasons given in connection with claim 45.

It is noted that claims 13-17 have been rejected under the doctrine of double patenting. Claim 13 is present in consequence of a restriction requirement imposed by the Examiner and represents initially presented claim 16. Claim 14 is present because of a restriction requirement and is identical with original claim 17. Claim 15 is present in consequence of a restriction requirement and represents original claim 18. Claim 16 is present because of an earlier asserted restriction requirement and represents original claim 19. Claim 17 is present because of an earlier asserted restriction requirement and represents original claim 20.

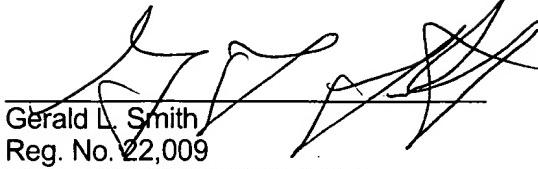
As discussed in considerable detail in earlier responses to the Examiner, this rejection is forbidden under the provisions of § 121 of the Patent Statute. Ironically, a submittal of a terminal disclaimer would not alter the term of any resulting patent. The Examiner's prolix commentary cannot save a non-statutory rejection.

The Examiner further has rejected claims 18-22 under the same doctrine and the applicants assert the same response in that the rejection is forbidden by the Patent Statute.

It is noted that claims 23, 49, 25, and 26 have been rejected under the doctrine of double patenting of an obviousness type. These claims look to the newly added features of Fig. 16-20. While the Examiners' reasoning in asserting the doctrine is wrong, in order to advance prosecution of the application, a terminal disclaimer is submitted. As noted above, the disclaimer has no impact whatsoever on the term of any resulting patent. An additional declaration under the provisions of 37 CFR 1.132 is forwarded herewith. With respect to the Examiners' commentary as to the preexisting document, it should be noted that the shelving system discussed in the preexisting declaration is described as being the same as that being claimed in the application and that it has been sold to not one but four national retailers, no mean feat. The supplementary declaration submitted herewith incorporates photographs of certain of the installations with an identification of how the claims do indeed read upon the installed product and further sets forth how small the assignee is.

Respectfully submitted,

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